IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 319 OF 2004

Mr. Chintamani Ramchandra
Tulshibaugwale & ors. ... Appellants

V/s

Smt. Mandakini J. Khurjekar & anr. ... Respondents

Mr. S.N. Chandrachud for the appellants.

Mr. R.V. Govilkar for the respondent No.1.

CORAM: P.V. KAKADE, J.
DATED: 9TH JUNE, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the 8th Additional District Judge, Pune dated 18.11.2003 dismissing the appeal and confirming the judgment and order passed by the Joint Civil Judge, Jr.Divn., Pune dismissing the suit which was for possession of encroached property and for consequential reliefs.

2. The plaintiffs filed the suit for possession of encroached area on the road adjacent to the suit property i.e. Plot No.60 in land Survey Nos. 89/1, 90/1 and 91/1 situated on the outskirts of Parvati. The

encroachment portion of that road admeasures 7 ft. in width at North-South and 60 ft. in length at East-West. It was the contention of the defendants that they had not committed any encroachment of the area on the road adjacent to the suit property.

3. On the basis of these pleadings, the learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs had failed to establish that there was any encroachment made by the defendants in the suit property and, as such, the suit came to be dismissed.

4. The appeal was carried to the District Court. The learned Addl. District Judge, after hearing both sides, confirmed the findings of the lower Court and dismissed the appeal. Hence the present appeal.

5. I have heard the learned counsel for both parties. Perused the available record.

6. At the outset, it may be noted that both the Courts below have recorded the concurrent findings to the effect that the plaintiffs have failed to establish the alleged encroachment on the basis of available record

which include Court Commissioner's map. However, it is apparent from the record that there were two maps available for the scrutiny of the Courts below, one drawn at the behest of the plaintiffs and the other one drawn at the behest of the defendants. While appreciating the evidence, the learned Judges have compared the maps and accepted the defendants' map which was found to be more accurate and drawn as per the relevant rules under the Survey Laws. As against this, the map drawn by the Court Commissioner, did not fulfill the technical criteria, in the sense that it did not locate the northen side boundary of the suit property, for which reference was in fact available to him. Under the circumstances, the plea of alleged encroachment came to be discarded by both the Courts below.

7. Time and again, the Apex Court has held that the findings of facts howsoever erroneous cannot be disturbed by the High Court in second appeal under Sec. 100 of the C.P.C. and on such footings it must be noted that, in fact, in this case, the findings recorded by both the Courts below appear to be just, legal and proper, which involves no substantial question of law to be considered in this appeal.

8. In the result, the appeal has no merits and stands

dismissed.

(P.V. Kakade, J.)